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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHRISTIAN WELLISCH,

Plaintiff,

v.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY, et al.,

Defendants.

Case No. [17-cv-00213-BLF](#)

**ORDER DENYING DEFENDANT’S
MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION
AND SUA SPONTE AMENDMENT OF
ORDER ON MOTIONS TO DISMISS**

[Re: ECF 46]

Presently before the Court is Defendant Pennsylvania Higher Education Assistance Agency (“PHEAA”)’s motion for leave to file a motion for reconsideration. Mot., ECF 46. The instant motion pertains to this Court’s Order Granting Defendants’ Motions to Dismiss with Leave to Amend (“Order”). ECF 43. Having carefully reviewed PHEAA’s motion and Plaintiff’s opposition, the Court DENIES Defendant’s motion because it has determined *sua sponte* that amendment of the order, rather than reconsideration, is appropriate under these circumstances.

As the parties are aware, the Court found that Plaintiff, Captain Wellisch, failed to state a claim upon which relief could be granted. In analyzing Wellisch’s claim under the Federal Servicemembers Civil Relief Act (“SCRA”), the Court wrote that PHEAA is subject to the SCRA, as it “plainly falls under section 3911’s definition of a ‘court,’” and suggested that PHEAA’s student loan servicing activities might constitute a “civil action or proceeding” under section 3932 of the SCRA. Order 5. PHEAA, through its motion for leave to file a motion for reconsideration, asks the Court to reconsider this suggestion in light of a recent decision in *Heejoon Chung v. U.S. Bank, NA*, No. 16-0017, 2017 WL 1395605 (D. Haw. Apr. 17, 2017).

As a preliminary matter, the Court notes that it does not find the decision in *Heejoon Chung* relevant because there, the court found only that the SCRA does not cover non-judicial

1 foreclosures. 2017 WL 1395605, at *9. At issue here, by contrast, is PHEAA’s servicing of
2 Wellisch’s student loans. For this reason, *Heejoon Chung* tells this court nothing about whether
3 PHEAA’s conduct constitutes a “civil action or proceeding.”

4 Upon review of PHEAA’s motion, the Court recognized that its order swept too broad, as
5 the Court did not intend to suggest that all of PHEAA’s student loan servicing activity constituted
6 a “civil action or proceeding.” For this reason, the Court issued an order with its proposed
7 amendment, and afforded Plaintiff an opportunity to respond. ECF 49. The Court proposed the
8 following amendment to page 5, lines 10–18 of the Order:

9 As Wellisch correctly points out, section 3912 of the SCRA
10 provides, “[t]his chapter applies to any judicial or administrative
11 proceeding commenced in any court or agency in any jurisdiction
12 subject to this chapter.” Opp’n to PHEAA Mot. 4 (quoting 50
13 U.S.C. § 3912). Moreover, section 3911 defines “court” as “a court
14 or any administrative agency of the United States or of any State
15 (including any political subdivision of a State)[.]” 50 U.S.C. §
16 3911(5). While the Court agrees that PHEAA could be subject to
17 the SCRA, as “a statutorily created instrumentality of the
18 Commonwealth of Pennsylvania,” PHEAA Reply 5, ECF 21,
19 Wellisch has failed to allege facts showing that PHEAA initiated, at
20 any point, a “judicial or administrative proceeding” while servicing
21 Wellisch’s loans. Wellisch merely alleges that “[t]he SCRA applies
22 to defendant PHEAA, whether PHEAA is deemed an administrative
23 agency or political subdivision of the Commonwealth of
24 Pennsylvania.” Compl. ¶ 39. Thus, without deciding whether
25 PHEAA is acting as a court or agency when it performs its function
26 as a loan servicer, the Court finds that Wellisch has failed to allege
27 facts supporting that PHEAA was acting in such a capacity.
28 Accordingly, Wellisch has failed to state a claim under the SCRA.

 Wellisch filed an opposition to this proposed amendment. ECF 50. In his opposition,
Wellisch notes, as does the Court, that the Court did not state, “that the business of student loan
servicing, in its entirety, is an administrative proceeding,” and that *Heejoon Chung* is inapposite.
Id. at 1–2. Wellisch also contends that the Court’s proposed amendment goes against Ninth
Circuit precedent finding that the SCRA is intended to be liberally construed. *Id.* at 2–3. The
Court agrees with this assertion as well, but does not believe that the proposed amendment
suggests a narrow interpretation of the SCRA. Rather, the Court merely finds that Captain
Wellisch must allege facts sufficient to support his allegation that PHEAA was acting as a court or
agency when it denied his IBR request. Finding Wellisch’s opposition unavailing, the Court will

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issue the aforementioned amendment in a separate order.

Based on the foregoing, the Court has *sua sponte* addressed the substantive issue raised by PHEAA in its motion for reconsideration, and on that basis, DENIES leave to file a motion for reconsideration.

The Court's previous order allowing Plaintiff to file an amended complaint on or before July 14, 2017, remains the Order of the Court.

IT IS SO ORDERED.

Dated: June 21, 2017


BETH LABSON FREEMAN
United States District Judge